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7 SEIU UNITED HEALTHCARE
WORKERS-WEST,

8 Plaintiff,

9 v.

10 SANTA ROSA COMMUNITY HEALTH
CENTERS,

11 Defendant.
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13 Case No. 22-cv-03261-JSC

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**ORDER GRANTING MOTION TO
COMPEL ARBITRATION**

26 Re: Dkt. No. 14

27 Petitioner SEIU United Healthcare Workers-West (the Union) filed this petition to compel
arbitration against Respondent Santa Rosa Community Health Centers (SRCHC) seeking to
compel Respondent to arbitrate a dispute regarding one of its members, Elizabeth Lencioni. There
is a parallel civil case pending in this District brought by Ms. Lencioni against the Union and
SRCHC. *See Lencioni v. SEIU, et al.*, Case No. 19-cv-07272-JD (N.D. Cal. Nov. 5, 2019). In that
action, Ms. Lencioni brings wrongful discharge claims against SRCHC and alleges that the Union
breached its duty of representation by failing to timely preserve her right to arbitration. Over two
years after Ms. Lencioni filed that action, the Union filed the underlying action and the now
pending motion to compel arbitration. (Dkt. No. 14.) Having considered the parties' briefs and
having had the benefit of oral argument on August 31, 2022, the Court GRANTS the motion to
compel arbitration. Respondent's procedural challenges must be presented to the arbitrator, not
this Court.

28
BACKGROUND

29 SRCHC and the Union are parties to a collective bargaining agreement (CBA)

1 which contains a grievance procedure for resolving union member disputes. (Dkt. No. 1 at ¶ 5;
2 Dkt. No. 1-1 at Sec. 38.) The grievance process contains four steps. (Dkt. No. 1-1 at 33-35.¹) At
3 Step One, once a grievance is filed there is a meeting with the director of human resources or its
4 designee. (*Id.* at 33.) If the Union is dissatisfied with human resources' response, the parties can
5 proceed to Step Two which involves filing a grievance with the Adjustment Board. (*Id.* at 34.) If
6 the Step Two grievance does not resolve the matter, then the parties shall meet with a mediator to
7 attempt a resolution at Step Three. (*Id.*) If the mediation does not resolve the grievance, then the
8 grieving party has ten days to advise the other party in writing of its intent to submit the
9 "unresolved dispute grievance to arbitration." (*Id.* at 34-35.)

10 While Ms. Lencioni was employed at SRCHC, she was a member of the Union and
11 protected by the CBA including its grievance provisions. (Dkt. No. 1 at ¶ 6.) On February 8,
12 2019, the Union filed a Step One grievance asserting that SRCHC terminated Ms. Lencioni's
13 employment without just cause. (*Id.* at ¶ 7.) SRCHC denied the grievance and the Union
14 advanced the grievance to Step 2. (*Id.* at ¶ 8.) The parties met for an Adjustment Board meeting
15 on March 25, 2019 and SRCHC again denied the grievance. (*Id.* at ¶ 9.) The Union then
16 advanced the grievance to Step Three and the parties attended a mediation on June 3, 2019. (*Id.* at
17 ¶ 11.)

18 A month later, on July 3, 2019, Union Coordinator Mark Hall sent an email to SRCHC
19 Human Resources Manager Renae Crabtree "requesting to meet with you and Elizabeth
20 Lencioni... to discuss the proposal regarding Elizabeth's termination." (Dkt. No. 14-2 at 97.)
21 Five days later, Ms. Crabtree responded stating:

22 I understand you would like to meet and discuss Elizabeth Lencioni's
23 case however as stated in section 38.4 of the CBA the time to respond
24 expired on July 1st. Attached is the last communication dated 6/21
sent to Michael Velasquez. No response was received as such SRCH
considers the grievance closed.

25 (Dkt. No. 14-2 at 99 (there is no attachment).) Mr. Hall and Ms. Crabtree exchanged emails the
26 following day regarding meeting in person. (*Id.* at 101-103.) Mr. Hall attests that he and Ms.

28 ¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 Lencioni met with Ms. Crabtree on July 12, but “the parties could not reach a mutually acceptable
2 resolution.” (Dkt. No. 14-2 at ¶ 15.) Mr. Hall indicates that SRCHS “maintained its position that
3 the case was ‘closed.’” (*Id.* at ¶ 16.)

4 On November 5, 2019, Ms. Lencioni filed a civil action against SRCHC for wrongful
5 termination and breach of contract, and the Union for breach of the duty of representation for
6 failing to timely submit her grievance to arbitration. *See Lencioni v. SEIU, et al.*, Case No. 19-cv-
7 07272-JD (N.D. Cal. Nov. 5, 2019). A month later, on December 5, 2019, Mr. Hall sent Ms.
8 Crabtree a letter demanding that SRCHC arbitrate Ms. Lencioni’s wrongful termination grievance.
9 (Dkt. No. 14-2 at 105.) Mr. Hall’s letter also indicated that it was his understanding that a former
10 representative of the union, Ian Velasquez, “did timely demand arbitration” and that if SRCHC
11 maintains its position that the arbitration demand was untimely, then the parties “must arbitrate the
12 procedural dispute.” (*Id.*) Jessica Jauregui, SRCHC’s Chief Human Resources Officer responded
13 a week later requesting any documentation that Mr. Velasquez made a timely demand for
14 arbitration and seeking authority for Mr. Hall’s statement that “the parties must arbitrate the
15 procedural dispute.” (*Id.* at 107.) The Union sent a response letter on January 21, 2020. (Dkt.
16 No. 14-3 at 7.) No response has been received. (Dkt. No. 14-3 at ¶ 5.)

17 Over two years later, on June 3, 2022, the Union filed the underlying petition to compel
18 arbitration. (Dkt. No. 1.) SRCHC filed its answer on July 25 and the following day the Union
19 filed the now pending motion to compel arbitration. (Dkt. Nos. 13, 14.)

20 DISCUSSION

21 Section 301(a) of the Labor Management Relations Act (“LMRA”), provides federal
22 jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization.”
23 29 U.S.C. § 185(a). This jurisdiction includes the power to enforce agreements that require
24 resolution of disputes through arbitration. *See Textile Workers Union of Am. v. Lincoln Mills of*
25 *Ala.*, 353 U.S. 448, 455 (1957). The district court determines in the first instance whether a
26 collective bargaining agreement “creates a duty for the parties to arbitrate the particular
27 grievance.” *AT & T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 648-49 (1986).
28 Arbitration clauses create a presumption of arbitrability such that “disputes involving the

1 agreement's substantive provisions must be arbitrated unless it may be said with positive
2 assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted
3 dispute." *Loc. Joint Exec. Bd., Loc. Joint Exec. Bd. v. Mirage Casino-Hotel, Inc.*, 911 F.3d 588,
4 596 (9th Cir. 2018) (cleaned up). Although the court decides whether the arbitration agreement
5 covers the subject matter of the dispute, questions of procedural arbitrability related to that dispute
6 "are presumptively for the arbitrator." *Id.*

7 The Union insists that the sole question before the Court is whether the Union's grievance
8 is "substantively arbitrable" and if so, then the arbitrator decides both the merits of the dispute and
9 any procedural issues such as whether the Union timely advanced the grievance. (Dkt. No. 14-1 at
10 7.) SRCHC does not dispute that the underlying grievance would have been arbitrable, but insists
11 that the Union waived the right to pursue arbitration by failing to make a timely demand for
12 arbitration. (Dkt. No. 16 at 2.)

13 **A. Timeliness of the Petition**

14 Generally, "a petition to compel arbitration under Section 301 has a six-month statute of
15 limitations." *SEIU United Healthcare Workers-W. v. Los Robles Reg'l Med. Ctr.*, 812 F.3d 725,
16 730 (9th Cir. 2015) (internal citation omitted). The statute of limitations begins to run "when it
17 [is] made clear ... to the Union that the Employer would not submit to arbitration." *Teamsters
Union Local 315 v. Great Western Chemical Co.*, 781 F.2d 764, 769 (9th Cir. 1986). An employer
18 "'make[s] it clear' that it refuse[s] to arbitrate and ... starts the statute of limitations, [when] an
19 unequivocal, express rejection of the union's request for arbitration [is] communicated to the
20 union. Constructive notice is not sufficient." *Local Joint Executive Bd. of Las Vegas v. Exber,
Inc.*, 994 F.2d 674, 676 (9th Cir. 1993) (internal citation omitted).

21 The Union spends much of its motion to compel arbitration arguing that the petition—
22 which was filed over two years after the last communication from SRCHC regarding Ms.
23 Lencioni's grievance—was timely because there was "never an unequivocal, express rejection of
24 the union's request for arbitration must be communicated to the union." *Exber*, 994 F.2d at 676.
25 The Court need not address this question, however, because SRCHC has not pled an affirmative
26 defense based on the statute of limitations. (Dkt. No. 13 at 3.) The statute of limitations is an
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1 affirmative defense which is waived if not raised in the first responsive pleading. *See Morrison v.*
2 *Mahoney*, 399 F.3d 1042, 1046 (9th Cir. 2005); *see also* Fed. R. Civ. P. 8(c). SRCHC has not
3 raised a statute of limitations defense either in its answer or in its opposition to the motion to
4 compel arbitration.

5 **B. Scope of the Arbitration Agreement**

6 “[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration
7 any dispute which he has not agreed so to submit.” *United Steelworkers of Am. v. Warrior & Gulf*
8 *Nav. Co.*, 363 U.S. 574, 582 (1960). “This axiom recognizes the fact that arbitrators derive their
9 authority to resolve disputes only because the parties have agreed in advance to submit such
10 grievances to arbitration.” *AT & T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 648–
11 49 (1986). “[I]n deciding whether the parties have agreed to submit a particular grievance to
12 arbitration, a court is not to rule on the potential merits of the underlying claims.” *Id.* at 649.
13 Rather, the court “is confined to determining (1) whether a collective bargaining agreement is in
14 existence and (2) whether the agreement requires arbitration of the dispute at issue.” *Unite Here*
15 *Loc. 30 v. Omni Hotels Mgmt. Corp.*, No. 19-CV-830-MMA (LL), 2019 WL 6118461, at *5 (S.D.
16 Cal. Nov. 18, 2019) (citing *Int’l Union of Operating Engineers, Local 150, AFL-CIO v. Flair*
17 *Builders, Inc.*, 406 U.S. 487, 491–92 (1972)).

18 “Thus ‘procedural’ questions which grow out of the dispute and bear on its final
19 disposition are presumptively *not* for the judge, but for an arbitrator, to decide.” *Howsam v. Dean*
20 *Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (*quoting John Wiley & Sons, Inc. v. Livingston*, 376
21 U.S. 543, 557 (1964)) (emphasis in original). “[T]he presumption is that the arbitrator should
22 decide allegations of waiver, delay, or a like defense to arbitrability.” *Howsam*, 537 U.S. at 84
23 (internal citation and alteration omitted). However, “[t]here is some support for the proposition
24 that a court may consider a strictly procedural question as to the timeliness of a demand for
25 arbitration in those rare instances where no factual dispute exists and resolution of the issue would
26 preclude all need for arbitration.” *Retail Delivery Drivers, Driver Salesmen, Produce Workers &*
27 *Helpers Loc. 588 v. Servomation Corp.*, 717 F.2d 475, 478 (9th Cir. 1983).

1 The Union maintains that the timeliness of its arbitration demand is a procedural question
2 for the arbitrator. SRCHC counters that it is not because Section 38.4 of the CBA states that

3 4. Power of Arbitrator – The Arbitrator shall render a final and
4 binding decision only on the matter(s) jointly submitted by the parties,
5 and shall have no power to amend the collective bargaining agreement
in any way.

6 (Dkt. No. 1-1 at 35.) According to SRCHC, because (1) waiving the time limits requires an
7 alteration of the CBA, and (2) the parties have not jointly submitted the procedural issue to the
8 arbitration, the issue is for the Court not the arbitrator to decide. SRCHC insists that this is one of
9 the “rare instances where no factual dispute exists” as in *Servomation*. SRCHC’s arguments are
unpersuasive.

10 First, the parties’ dispute regarding the timeliness of the Union’s arbitration demand cannot
11 be extricated from their substantive dispute. As the Supreme Court noted in *Wiley*, procedural
12 questions are often intertwined with the merits of a case such that both issues should be decided in
13 the same forum:

14 We think that labor disputes of the kind involved here cannot be
15 broken down so easily into their ‘substantive’ and ‘procedural’
16 aspects. Questions concerning the procedural prerequisites to
17 arbitration do not arise in a vacuum; they develop in the context of an
actual dispute about the rights of the parties to the contract or those
covered by it.

18 ...

19 Doubt whether grievance procedures or some part of them apply to a
20 particular dispute, whether such procedures have been followed or
excused, or whether the unexcused failure to follow them avoids the
duty to arbitrate cannot ordinarily be answered without consideration
of the merits of the dispute which is presented for arbitration.

21 *Wiley*, 376 U.S. at 556-57. Here, the parties dispute whether the Union made a timely demand for
22 arbitration. Given the CBA’s broad definition of a grievance as any “complaint regarding the
23 application or interpretation of the Agreement” (Dkt. No. 1-1, § 38 at 33), the “parties’ dispute
24 about timeliness cannot be extricated from their substantive disagreement about the meaning of
the CBA.” *Unite Here! Loc. 2 v. Tastes on the Fly, Inc.*, No. 21-CV-01801-DMR, 2021 WL
25 3286829, at *4 (N.D. Cal. Aug. 2, 2021) (finding that the parties’ timeliness dispute was for the
arbitrator not the court to decide given that the CBA broadly defined a grievance as any dispute

1 “involving the meaning/interpretation or alleged violation of any provision of this
2 Agreement”); *see also Unite Here Loc. 30 v. Omni Hotels Mgmt. Corp.*, No. 19CV830-MMA
3 (LL), 2019 WL 6118461, at *7 (S.D. Cal. Nov. 18, 2019) (finding that arguments regarding
4 timeliness and conditions precedent to arbitration were for the arbitrator to decide where the
5 parties’ agreement broadly defined a grievance subject to the arbitration process as “a dispute
6 between the parties as to the interpretation or application of any provision(s) of this Agreement.”);
7 *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union,*
8 *AFL-CIO/CLC v. Vista Metals Corp.*, No. 19-CV-01781 CAS (SHKx), 2020 WL 1639895, at *6
9 (C.D. Cal. Apr. 1, 2020) (collecting cases re: the same).

10 This applies equally to SRCHC’s arguments regarding the arbitrator’s “powers” under the
11 CBA—it is for the arbitrator, not this Court, to decide whether it has the power to resolve disputes
12 only if “jointly submitted” and whether resolving the parties’ timeliness dispute would involve
13 amendment of the CBA. *See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,
14 24–25 (1983) (“[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor
15 of arbitration, whether the problem at hand is the construction of the contract language itself or an
16 allegation of waiver, delay, or a like defense to arbitrability.”).

17 Second, this is not one of the “rare instances where no factual dispute exists and resolution
18 of the issue would preclude all need for arbitration.” *Retail Delivery Drivers*, 717 F.2d at 478.
19 SRCHC’s argument to the contrary is essentially that there is no factual dispute because it believes
20 that it is right. The Union, however, sharply disputes SRCHC’s statement that “the deadline to
21 demand arbitration passed on July 8, 2019” and that the Union’s “late demand for arbitration was
22 unequivocally rejected.” (Dkt. No. 16 at 5.) Indeed, the Union insists that discussions were
23 ongoing—Mr. Hall, Ms. Crabtree, and Ms. Lencioni met on July 12, and according to Mr. Hall,
24 “the Union made further settlement offers.” (Dkt. No. 14-2 at ¶¶ 14-16.) Resolving these factual
25 disputes and the credibility of the parties’ versions of events is a question for the arbitrator, not the
26 Court. *See Servomation*, 717 F.2d at 478 (“when time limitations and other procedural
27 requirements are made an express part of the arbitration agreement, they become part of the
28 bundle of issues the parties consented to have decided by an arbitrator’s special interpretative

1 ability” and declining to rule on the parties’ timeliness dispute where the union had “claimed a
2 reason for finding it had complied with the timeliness requirements” of the collective bargaining
3 agreement).

4 Accordingly, SRCHC has not shown a basis to depart from the general rule that procedural
5 disputes—such as the timeliness issue here—should be decided by an arbitrator, not the court.

6 **C. Discovery**

7 In the alternative, SRCHC asks the Court to defer ruling pending discovery. SRCHC has
8 not explained, however, how any discovery would be relevant to the motion to compel arbitration.
9 It would not. The discovery it seeks may be relevant to the timeliness of the Union’s arbitration
10 demand, but that is an issue for the arbitrator to decide.

11 **CONCLUSION**

12 For the reasons stated above, the Court GRANTS the motion to compel arbitration.
13 Respondent is ordered to submit the grievance regarding Ms. Lencioni’s termination to arbitration
14 pursuant to the terms of the CBA and raise the issue of the untimeliness of the demand with the
15 arbitrator.

16 This Order disposes of Docket No. 14.

17 The Clerk shall close the case.

18 **IT IS SO ORDERED.**

19 Dated: August 31, 2022

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JACQUELINE SCOTT CORLEY
United States District Judge